

dimensional space, the gauging means including a plumb b b, the tool having means for storing the plumb bob within the tool.

#### REMARKS

Applicant wishes to express his appreciation for the Examiner's care in reviewing the formal requirements of the claims. However, reconsideration of the 35 USC 112 objection to claim 11 is respectfully requested. In claims 6 and 11 a plumb bob is not included as a positive element of the claims and has no required antecedent basis.

Reconsideration of the objection to claim 1 under 35 USC 112, is also respectfully requested. It is believed that the amendment entered herein clarifies the claim language and removes any basis for objection.

Reconsideration is respectfully requested of the rejection of claim 1 under 35 USC 103 over Walters et al. in view of Lee et al. Walters et al does not disclose or suggest a structure that has means for assessing the true status of a steel door frame in relation to three dimensional space. Walters et al. disclose a carpenter's square and level which can only supply information in two dimensional space. The Examiner's hindsight addition of  $d_3$  on Walters et al. Fig. 1 cannot supply the deficiencies of the reference. The reference device cannot gauge the true condition of a steel door frame in relation to three dimensional space. Note that Walters et al.

do not have any disclosure in relation to that function. There is no discussion of any function in relation to the Examiner's added hindsight number  $d_3$ . Note that the spirit levels 12 and 14 of Waters et al. have no cooperation and provide no information in the Y - Z plane.

Neither Walters et al. or Lee et al. provide any incentive for combining a gauging device and a cylindrical plumb bob case into a three dimensional gauge as claimed. The only incentive for the radical reconstruction of Walters et al. and Lee et al. is provided by applicant's disclosure. A rejection on this basis is impermissible hindsight. See In re Imperato 179 USPQ 730 (CCPA 1973).

Walters et al. does not disclose or suggest how to incorporate a means for storing a plumb bob in their device. Lee et al. only discloses a holder for a plumb bob. Lee et al.'s holder has no function other than to hold and protect a plumb bob. There is no structure disclosed or suggested for Lee et al.'s holder which can assess the true status of a door frame. The holder is specifically disclosed as being a cylinder, as such, the holder is incapable of being an accurate gauge.

The two references teach apart and further teach away from applicant's claimed invention. It is only by reference to applicant's disclosure that one skilled in the art would be able to reconstruct the Walters et al. reference and the Lee et al. reference, to achieve applicant's claimed invention. There is no disclosure of how to

modify Walters et al.'s device to gauge the true condition of a steel door in relation to three dimensional space. There is no suggestion of where and how to incorporate a plumb bob storage means in the Walters et al. structure without destroying the references' structure and function.

The references of record do not disclose or suggest a device which is capable of assessing the true status of a door frame in relation to three dimensional space. This function is not present in the references and there is no structure in the references capable of performing this function. Only applicant has disclosed this function and structure capable of performing this function.

The Examiner's comments with regard to the allowed claims 6-10 and 12-16 (and allowable claim 11) are appreciated. However, the Examiner's comments are incomplete. Only applicant's device is capable of assessing the true status of a door frame in relation to three dimensional space. This function is not present in the references and there is no structure in the references capable of performing this function. Only applicant has disclosed this function and structure capable of performing this function. Only applicant has disclosed such a device which includes any means for storing a plumb bob within the device.

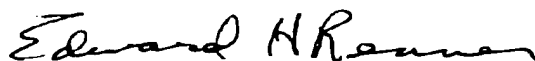
Attached hereto is a marked-up version of the changes made to claim 1 by the current amendment. The attached page is captioned "Version with markings to show changes made."

In summary, it is respectfully submitted that claims 1 and 11 are patentable over the references of record and meet the formal requirements of 35 USC 112. Entry of this amendment and a speedy allowance is respectfully requested.

Version with markings to show changes made

Claim 1 (as twice amended). A tool for inspecting and gauging the accuracy of an installed steel door frame structure, the tool having a means for removable attachment to a frame, the attachment means including a magnet, the tool also having means for gauging the true condition of the frame in relation to three dimensional space [a true status], the gauging means including a plumb bob, the tool having means for storing the plumb bob within the tool [, the gauging means including means for assessing the true status of a frame in relation to three dimensional space].

Respectfully submitted,

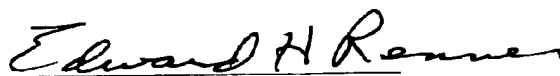


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